



NEC3 Professional Services Contract (PSC3)

**Contract between Eskom Holdings SOC Ltd
(Reg No. 2002/015527/30)**

**and [Insert at award stage]
(Reg No. _____)**

for [•]

Contents:

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pages**

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

| Document reference | Title | No of pages |
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| C1.2a | Contract Data provided by the <i>Employer</i> | [3] |
| C1.3 | Securities proforma | [16] |



C1.1 Form of Offer & Acceptance

Offer

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

Additional Geotechnical Investigation at Matla Ash Dams

The tenderer, identified in the Offer signature block, has

| | |
|---------------|---|
| <i>either</i> | examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender. |
| <i>or</i> | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Consultant* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

| | |
|---|----------|
| The offered total of the Prices exclusive of VAT is | R |
| Value Added Tax @ 15% is | R |
| The offered total of the Prices inclusive of VAT is | R |
| (in words) | |

If Option E or G apply, for each offered total insert in brackets, "(Not Applicable – Cost reimbursable)"

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Consultant* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Consultant the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

| | |
|---------|--|
| Part C1 | Agreements and Contract Data, (which includes this Form of Offer and Acceptance) |
| Part C2 | Pricing Data |
| Part C3 | Scope of Work: The Scope |

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

Schedule of Deviations

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

| No. | Subject | Details |
|-----|---------|---------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature
of witness

Date

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

| Clause | Statement | Data |
|--------|--|---|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option | |
| | dispute resolution Option | A: Priced contract with activity schedule |
| | and secondary Options | W1: Dispute resolution procedure |
| | | X2: Changes in the law |
| | | X4: Parent company guarantee |
| | | X7: Delay damages |
| | | X8: Collateral warranty agreements |
| | | X9: Transfer of rights |
| | | X10: <i>Employer's Agent</i> |
| | | X11: Termination by the <i>Employer</i> |
| | | Z: <i>Additional conditions of contract</i> |
| | of the NEC3 Professional Services Contract (April 2013) ¹ | |
| 10.1 | The <i>Employer</i> is (Name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and www.ecs.co.za

Tel No. 0176126473

Fax No. N/A

| | | |
|----------|---|---|
| 11.2(9) | The <i>services</i> are | Additional Geotechnical Investigation at Matla Ash Dams |
| 11.2(10) | The following matters will be included in the Risk Register | <ol style="list-style-type: none"> 1. Inclement weather 2. Unprotected strikes 3. Delayed access to the working area |
| 11.2(11) | The Scope is in | Part 3: Scope of Work |
| 12.2 | The <i>law of the contract</i> is the law of | the Republic of South Africa |
| 13.1 | The <i>language of this contract</i> is | English |
| 13.3 | The <i>period for reply</i> is | 2 days |
| 13.6 | The <i>period for retention</i> is | N/A |

2 The Parties' main responsibilities

| | | | |
|------|---|------------|-------------|
| 25.2 | The <i>Employer</i> provides access to the following persons, places and things | access to | access date |
| | | 1 Ash Dams | 24/03/2023 |

3 Time

| | | | | |
|---------|--|--------------------------------------|---------------------------|------------|
| 31.2 | The <i>starting date</i> is. | 24/03/2023 | | |
| 11.2(3) | The <i>completion date</i> for the whole of the <i>services</i> is. | 24/04/2023 | | |
| 11.2(6) | The <i>key dates</i> and the <i>conditions</i> to be met are: | Condition to be met | | key date |
| | | 1 | Geotechnical study report | 24/04/2023 |
| 31.1 | The <i>Consultant</i> is to submit a first programme for acceptance within | 5 working days of the Contract Date. | | |
| 32.2 | The <i>Consultant</i> submits revised programmes at intervals no longer than | 7 days. | | |

4 Quality

| | | |
|------|---|--|
| 40.2 | The quality policy statement and quality plan are provided within | 5 working days of the Contract Date. |
| 42.2 | The <i>defects date</i> is | [•] weeks after Completion of the whole of the <i>services</i> . |

5 Payment

| | | | |
|------|--|--|--------|
| 50.1 | The <i>assessment interval</i> is | between the 25 th day of each successive month. | |
| 50.3 | The <i>expenses</i> stated by the <i>Employer</i> are | Item | Amount |
| | | [•] | [•] |
| | | [•] | [•] |
| | | [•] | [•] |
| | | [•] | [•] |
| 51.1 | The period within which payments are made is | 14 days weeks. | |
| 51.2 | The <i>currency of this contract</i> is the | South African Rand | |
| 51.3 | The <i>interest rate</i> is | <p>the publicly quoted prime rate of interest charged by [•] Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,</p> <p>and</p> <p>the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove</p> | |
| 6 | Compensation events | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 7 | Rights to material | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 8 | Indemnity, insurance and liability | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 82.1 | The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | The total of the Prices | |

9 Termination

There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.

10 Data for main Option clause

A Priced contract with activity schedule

21.3 The *Consultant* prepares forecasts of the total expenses at intervals of no longer than **[2 weeks]**.

11 Data for Option W1

W1.1 The *Adjudicator* is the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).

Address **[•]**

Tel No. **[•]**

Fax No. **[•]**

e-mail **[•]**

W1.2(3) The *adjudicator nominating body* is: the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).

| | | |
|---------|--|---|
| W1.4(2) | The <i>tribunal</i> is: | arbitration |
| W1.4(5) | <p>The <i>arbitration procedure</i> is</p> <p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is | <p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>[●] South Africa</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p> |

12 Data for secondary Option clauses

| | | |
|-----------|--|---|
| X1 | Price adjustment for inflation | |
| X1.1 | <p>The index is</p> <p>The staff rates are {state whether "Fixed at the Contract Date and are not variable with changes in salary paid to individuals" or "Variable with changes in salary paid to individuals"}</p> | <p>[●].</p> <p>[●]</p> |
| X2 | Changes in the law | |
| X2.1 | The law of the project is | A change in the law of the country in which the Site is located is a compensation event if it occurs after the Contract Date. The Project Manager may notify the Contractor of a compensation event for a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced. |

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| X4 | Parent company guarantee | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data. | |
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| X7 | Delay damages | | |
| X7.1 | Delay damages for late Completion of the whole of the <i>services</i> are | 0.5% of the total services value, of the delay per day up to maximum 10% of the total services value | |
| X8 | Collateral warranty agreements | | |
| X8.1 | The <i>collateral warranty agreements</i> are: | agreement reference [•] | third party [•] |
| X9 | Transfer of rights | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data. | |
| | | | |
| | | | |
| X11 | Termination by the <i>Employer</i> | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data. | |
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| X18 | Limitation of liability | |
| X18.1 | The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to: | R0.00 (Zero Rand) |
| X18.2 | The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to: | The total of the Prices |
| X18.3 | The <i>end of liability date</i> is | five years after Completion of the whole of the services/task order. |
| | | |
| | | |
| Z | The <i>Additional conditions of contract</i> are: | Z1 to Z14 always apply. |

Z1 Cession delegation and assignment

- Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

- Z2.1 If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.
- Z2.3 The *Consultant* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.

Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the services in addition to the amounts due in terms of core clause 92.1.

Z4 Confidentiality

- Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z5 Waiver and estoppel:

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Provision of a Tax Invoice. Add to core clause 51

- Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z7 Notifying compensation events

- Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

Z8 *Employer's* limitation of liability

- Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z9.1 or had a business rescue order granted against it.

Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)

- Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z11 Ethics

For the purposes of this Z-clause, the following definitions apply:

| | |
|---------------------------|--|
| Affected Party | means, as the context requires, any party, irrespective of whether it is the <i>Consultant</i> or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends, |
| Coercive Action | means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally, |
| Collusive Action | means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, |
| Committing Party | means, as the context requires, the <i>Consultant</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees, |
| Corrupt Action | means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party, |
| Fraudulent Action | means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation, |
| Obstructive Action | means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and |

Prohibited Action means any one or more of a Coercive Action, Collusive Action, Corrupt Action, Fraudulent Action or Obstructive Action.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Consultant's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Consultant's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

- Z12.1 Replace core clause 81 with the following:
- 81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

| Insurance against | Minimum amount of cover | For the period following Completion of the whole of the services or earlier termination |
|--|--|---|
| Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the services | Commercial and business to determine. [Delete this note after inserting] | Commercial and business to determine [Delete this note after inserting] |
| Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> | <p><u>Loss of or damage to property:</u> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><u>Bodily injury to or death of a person:</u> The amount required by the applicable law.</p> | Commercial and business to determine [Delete this note after inserting] |

| | | |
|---|---|---|
| Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law | Commercial and business to determine [Delete this note after inserting] |
|---|---|---|

81.3 The *Employer* provides the insurances stated in the Insurance Table B.

INSURANCE TABLE B

| Insurance against or name of policy | Minimum amount of cover or minimum limit of indemnity |
|---|---|
| Assets All Risk | Per the insurance policy document |
| Contract Works insurance | Per the insurance policy document |
| Environmental Liability | Per the insurance policy document |
| General and Public Liability | Per the insurance policy document |
| Transportation (Marine) | Per the insurance policy document |
| Motor Fleet and Mobile Plant | Per the insurance policy document |
| Terrorism | Per the insurance policy document |
| Cyber Liability | Per the insurance policy document |
| Nuclear Material Damage and Business Interruption | Per the insurance policy document |
| Nuclear Material Damage Terrorism | Per the insurance policy document |

Z14 Asbestos

For the purposes of this Z-clause, the following definitions apply:

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the

OEL.

| | |
|------------------------------|--|
| Ambient Air | means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet. |
| Compliance Monitoring | means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| OEL | means occupational exposure limit. |
| Parallel Measurements | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results. |
| Safe Levels | means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| Standard | means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles. |
| SANAS | means the South African National Accreditation System. |
| TWA | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA. |

- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the

Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

[Note to contract compiler:

Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

Option X4: Parent company guarantee

These secondary Options require a bond or guarantee “in the form set out in the Scope”. Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Scope.

The *Consultant* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

[Note to contract compiler: If there are no ASGI-SA Obligations in this contract, delete the above statement]

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Consultant's Parent Company)

**Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg**

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd

(the *Employer*) and

{Insert registered name and address of the *Consultant*}

(the *Consultant*), for

{Insert details of the services from the Contract Data}

(the *services*).

I/We the undersigned

on behalf of the *Consultant's*
parent company

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Employer* that the *Consultant* shall Provide the Services in accordance with the above numbered Contract.

1. If for any reason the *Consultant* fails to Provide the Services, we hereby agree to cause to Provide the Services at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Consultant* and the *Employer* and/or between us and *Consultant*; nor any alteration in the obligations undertaken by the *Consultant* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Consultant*.
4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Consultant* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Consultant*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the Supreme Court of South Africa.

Signed at _____ on this _____ day of _____ 20_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

PART 2: PRICING DATA
PSC3 Option A

| Document reference | Title | No of pages |
|--------------------|-------------------------------|-------------|
| C2.1 | Pricing assumptions: Option A | [•] |
| C2.2 | The <i>activity schedule</i> | [•] |

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

Option A is a lump sum form of contract where the work to be done is broken down into well defined activities each listed in the *activity schedule* and priced by the tendering consultant as a lump sum. (See clause 11.2(18)).

Only completed activities which are without Defects are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date. (See clause 11.2(15)).

The *activity schedule* may change after the Contract Date as a result of compensation events. (See clause 11.2(14)).

Function of the Activity Schedule

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

Preparing the activity schedule

Generally it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant*:

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the service for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

Expenses

Expenses are not included in the *activity schedule* items and are assessed separately at each assessment date, unless an additional condition of contract (Z clause) is included which requires that expenses be

included within activity Prices and not paid separately.

Expenses associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the activity schedule prices or *staff rates*.

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

Staff rates

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

This is because *staff rates* can be established in one of three ways:

- rates for named staff,
- rates for categories of staff or
- rates related to salaries paid to staff.

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13 and 14 in the PSC3 Guidance Notes.

C2.2 the *activity schedule*

Use this page as a cover page to the *Consultant's activity schedule* or include here in this format:

| Item No. | Programme Reference | Activity description | Price (excl VAT) |
|----------|---------------------|---|------------------|
| | | <u>P&G</u> | |
| 1 | | Site establishment | |
| 2 | | Time related P&G's | |
| 3 | | Security | |
| 4 | | Health & Safety Environmental | |
| | | <u>Activities</u> | |
| | | <u>Setup</u> | |
| 5 | | Mobile Setup and Rehabilitation - Rotary Core Drilling | |
| 6 | | Mobile Setup and support - SCPTu | |
| 7 | | Excavator (20ton) | |
| | | <u>Drilling</u> | |
| 8 | | Drilling (including Recovery, Drills Aids and Water Carting | |
| 9 | | Geotechnical Drilling NWD4 | |
| | | <u>SCPT u Probe</u> | |
| | | <u>Test Pitting</u> | |
| 10 | | Test pitting with a 20 ton excavator | |
| | | <u>Casing</u> | |
| 11 | | Casing, which may be removed (estimated @5m/borehole) | |
| | | <u>GeoTechnical Report</u> | |
| 12 | | Borehole Supervision and Logging including Core Photographs | |
| 13 | | SCPTu data acquisition and Processing | |
| 14 | | Test Profiling | |
| 15 | | Data Capturing | |

| | | | |
|----|--|---|--|
| 16 | | Geotechnical Engineer- Site Visit and Supervision | |
| 17 | | Geotechnical Engineer Report and Stability Assessment | |
| | | <u>Samples & Tests</u> | |
| 18 | | Shelby Tube Samples, 63mm | |
| 19 | | Sampling Tests Pits | |
| 20 | | Indicator Test | |
| 21 | | Consolidation tests | |
| 22 | | Chemical Test | |
| 23 | | Other Tests | |
| 24 | | Uniaxial compressive and Point load testing | |
| 25 | | Water level reading | |
| 26 | | Standpipe and lockable cap-PVC | |
| | | <u>Laboratory Samples on Borehole Cores</u> | |
| 27 | | Particle size analysis | |
| 28 | | Moisture Content | |
| 29 | | Uniaxial Compressive | |
| 30 | | Rock Point load Strength Index Tests | |
| 31 | | PH on Water obtained from each borehole | |
| 32 | | Resistivity on water obtained from each borehole | |
| 33 | | Chloride and Sulphate content on water obtained from each borehole | |
| 34 | | Shear box test | |
| 35 | | Cone Penetration Test (CPTu) tests that include seismic soundings and At least three CPTu with seismics at each piezometer line | |
| 36 | | Pore pressure dissipations every 1.5 m | |
| 37 | | Rotary core drilling on each piezometer line with Shelby tube sampling at every change in stiffness in the ash | |
| 38 | | Test pits to be excavated to refusal or maximum reach of a 20 t excavator | |
| 39 | | Undisturbed sampling from every layer identified in the pits | |
| 40 | | Dynamic Probe Super Heavy (DPSH) test is conducted adjacent to each test pit. | |
| | | Total of the Prices | |

This section can be used when the *staff rates* and *expenses* are considerable in number and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

The *staff rates* are:

| No. | Designation (or category) or name of staff member | Rate per {hour, day, month} excluding VAT |
|-----|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

The *expenses* are:

| No. | Expense item | Amount / rate excluding VAT |
|-----|--------------|-----------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

| Document reference | Title | No of pages |
|---------------------------|--|--------------------|
| C3.1 | This cover page <i>Employer's Scope</i> | 1 |
| C3.2 | <i>Consultant's Scope</i> | |
| | Total number of pages | |

C3.1: EMPLOYER'S SCOPE

Contents

When the document is complete, insert a 'Table of Contents'. To do this go to: Insert, → Reference, → Index and tables → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained.

Otherwise insert list of contents manually.

- Data books, reviews, reports and diagrams/drawings shall be submitted to Engineering after the completion of the work. Engineering to forward the data books to Quality Department (Document Control)
- All QCP's to be submitted to Engineering and Quality for approval prior to outage/project or maintenance work commencement.

| | SCOPE OF WORK DESCRIPTION / ACTIVITY | PROCEDURE, SPECIFICATION, ENG. REQUIREMENTS / DOCUMENTATION | HOLD POINTS, WITNESS, REPORTS | RESPONSIBLE PARTY |
|---|--|--|----------------------------------|-------------------|
| 1 | Safety | <ul style="list-style-type: none"> • All work is to be done in accordance with Matla plant procedures and safety regulations. (GGR 0992). • Matla power station induction must be done before any work commences. • Permit to work must be in place before any work commences. • Worker's register must be completed and daily risk assessment conducted before any work commences. | Eskom to witness. | Contractor |
| 2 | Environmental Management. | <ul style="list-style-type: none"> • All activities listed in the National Environmental Act 107 of 1998, EIA Regulation 982,983,984 & 985(2014), must have AUTHORISATION before commencement of work. • The contractor shall comply with all applicable legal and other requirements. • The polluter pays principle will be applied. • The contractor manager shall ensure compliance with Eskom Matla Environmental procedures to ensure the prevention of pollution (OMOP 4090 and 4402). • The last payment will be processed based on the status of the last housekeeping check sheet (Annexure G: OMOP 4402) of designated area. • EMS file based on ISO14001 will be required. | Eskom to witness. | Contractor |

| | | | | |
|----|-------------------------------|---|------------|------------|
| .3 | Quality Management | <ul style="list-style-type: none"> • The contractor/executioner of work will be responsible for drawing up all QCP documentation and this must be approved by engineering and authorised by the Quality Department before commencing with the work. • Contractors/executioner to adhere to QM 58 and OMOP4497 requirements • Number of NCR issued can affect your next tendering process. • The QCP shall be signed progressively by the Engineer/Supervisor, Eskom QC Inspector, Contractor QC Inspector and/or AIA. • No procuring of outage items without the approval of scopes by quality • All outage scopes creep and scopes addition should be approved by quality • No contractor should be in the possession of scopes for execution without the scopes approved by quality • The contractor is subjected to quality auditing at any point in time during execution of scope. | Hold point | Contractor |
| .4 | Inputs from other departments | | | |
| .5 | Commissioning reference | | | |

| | SCOPE OF WORK DESCRIPTION / ACTIVITY | PROCEDURE, SPECIFICATION, ENG. REQUIREMENTS / DOCUMENTATION | HOLD POINTS, WITNESS, REPORTS | RESPONSIBLE PARTY |
|--|--|--|-------------------------------------|----------------------|
|--|--|--|-------------------------------------|----------------------|

DETAILED SCOPE

| SCOPE COMPILATION REFERENCES | | | | |
|--|-----|----|-----|----------|
| SOURCE & Ref No. | Yes | No | N/A | Comments |
| Previous outage service reports | | | X | |
| Return to service data packages | | | X | |
| Maintenance Strategy with Rev number | | | X | |
| SAP defects (attach list as appendix) | | | X | |
| GHRMS (STEP) reports (Generation Heat Rate Management System) | | | X | |
| Online Condition Monitoring | | | X | |
| Pre-outage performance test results | | | X | |
| Post outage performance test results | | | X | |
| GPSS/ Plant Performance data on UCLF incurred | | | X | |
| OMS / IIRMS recommendations (Audits Reports) | | | X | |
| Risk controls (IRM system) | | | X | |
| Previous audits and reviews (e.g. ERAP) | | | X | |

| | | | | |
|---|--|--|---|--|
| Engineering Change Requests (Projects) | | | X | |
| LOPP strategy reports | | | X | |
| URS | | | X | |
| Philosophy (Outage) | | | X | |
| Condition Monitoring Report | | | X | |
| VA/PHD Viewer trends | | | X | |
| Corrective Actions | | | X | |
| CARAB reports | | | X | |
| Statutory Requirements | | | X | |
| Grid code requirements | | | X | |
| Waivers and Exemptions | | | X | |
| Calibration requirements | | | X | |
| Previous Outage SOW variations | | | X | |
| Post Mortems Actions from previous outages | | | X | |
| Pre-Outage plant walks | | | X | |
| Risk based inspection (RBI) report | | | X | |
| Simulation, TOIs, OON, SI | | | X | |

| 2 | SCOPE OF WORK DESCRIPTION / ACTIVITY | PROCEDURE, SPECIFICATION, ENG. REQUIREMENTS DOCUMENTATION | HOLD POINTS, WITNESS, REPORTS | RESPONSIBLE PARTY |
|--|--|---|-------------------------------|-------------------|
| This scope gives additional requirement and specification on the geotechnical studies that are required at Matla Ash Dam (See Figure 1 below) in regards and support of Kriel to Matla Ash Transfer Project Scope for Basic and Detailed Design (EAP0615-1). This will confirm parameters such as friction angle, cohesion and unit weight as well as determining new variables such as the position of the critical state line. | | | | |
| 2.0 | <p>The service provider/contractor needs to perform the following geotechnical studies at Matla Power station Ash Dams:</p> <ul style="list-style-type: none"> Seismic Cone Penetration Tests with pore pressure measurements (SCPTu.) must be conducted on each piezometer line in accordance with latest ASTM standard. A minimum of 3 tests is to be conducted at each of the 14 piezometer lines with probably 5m into foundation and until refusal is met. The SCPTu test must intercept and define the foundation material underlying the Ash Dam. A dissipation test must be performed at adequate intervals, with adequate dissipation time to define the pore pressure regime. Seismic data (Shear wave velocities) must be obtained at each rod change/every metre. The contractor will only charge for metres probed and dissipation time used. The contractor is expected to define this interval and quality assure the | | | |

| | | | | |
|--|---|--|--|--|
| | <p>SCPTu data</p> <ul style="list-style-type: none">• The SCPTu tests must include Mostap sampling of the layers of interest defined by the contractor during the probing.• The SCPTu test equipment should make use of drilling through layers which may cause refusal with the drilling equipment described below.• Rotary core drilling and/or Shelby tube sampling on each piezometer line (14). Rotary core drilling/ sampling with Shelby tubes at contractor derived intervals to get the soil properties of the in-situ ash and foundation material. Soil sampling should target layers with different properties and must include non-cohesive granular ash, pozzolanic/hardened ash layers as well as the underlying foundation material. The sampling will be done in the line of SCPTu probes as indicated in Figure 2.• The core drilling needs to extend from the surface into the foundation material on at least one hole (the highest) per piezometer line. The average depth will be 30m and three boreholes per SCPTu line can be allowed for. Only metres drilled may be charged for.• The Shelby tube samples, rotary core samples and the Mostap samples must be analysed at a SANAS accredited laboratory for particle size distortion (PSD), Atterberg limits , moisture, density and strength parameters. The number of tests should allow for statistically reliable results. | | | |
|--|---|--|--|--|

| | | | | |
|-----|---|--|--|--|
| 2.1 | <p>Deliverables</p> <p>Submit a detailed geotechnical report which interprets the SCPTu and laboratory data. The report must:</p> <ul style="list-style-type: none"> • Illustrate all probe locations tested on the Ash Dam, • Report on the soil laboratory testing with and without interpretation • Define the stratigraphy of each slope with all the derived properties of each interpreted layer • Derive the pore pressure regime of each slope from the SCPTu data and compare/interpret the results to the standpipe piezometer data • The report must include a stability analysis for each piezometer line (14) using the data gathered. • The report must include recommendations and all the test results both with and without interpretation. • Raw uninterpreted SCPTu and laboratory data must be made available if requested in an approved digital format, preferably Microsoft Excel. | | | |
| 2.2 | <p>Important Note:</p> <p>Housekeeping is mandatory.</p> | | | |



Figure 1: Matla Ash Dam field.

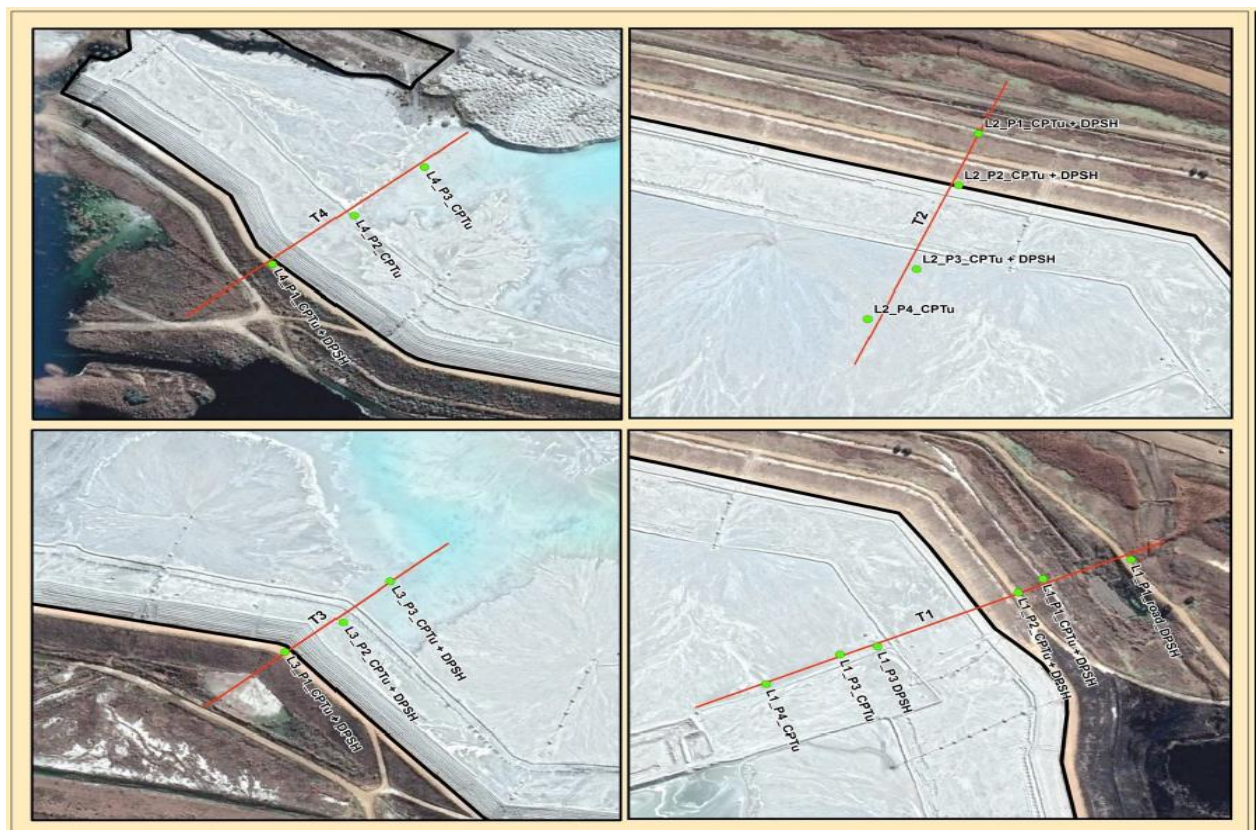


Figure 2: CPTu position

PART 4: SITE INFORMATION

| Document reference | Title | No of pages |
|--------------------|-----------------------|-------------|
| C4 | This cover page | 1 |
| | Site Information | |
| | Total number of pages | |

PART 4: SITE INFORMATION

Core clause 11.2(16) states

“Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

Delete this note and others given in boxes like this one at final draft stage.

The compiler of this document should first consult the ECC3 2013 Guidance Notes page 24. Further notes are given under each heading below.

Site Information is information about the Site at the time of tender upon which the tendering contractor bases his prices. It is fixed and does not include anything about what happens on the Site after award; that is Works Information.

Site Information does not include weather data; that is included in the Contract Data.

If the *Contractor* subsequently encounters conditions which are different to those described here, he may be entitled to notify a compensation event.

General description

Provide a general description of the Site and its location. Reference would probably be made to a drawing showing the Site and its surroundings and the *boundaries of the site* as required by the Contract Data. It is particularly important that details of surrounding buildings be provided where crane operation is likely to be affected, or the *works* involve deep foundations adjacent to existing buildings.

Existing buildings, structures, and plant & machinery on the Site

If the *works* have interfaces or hook up points with existing facilities or comprise refurbishment of existing facilities, provide full details of these so that the tendering contractor can plan his design and construction to integrate with them as the Works Information requires. As built drawings of the existing facilities usually provide the necessary information; such drawings can be listed here stating where they are located for the *Contractor's* use.

Subsoil information

Provide details of geotechnical reports, borehole records and test results for parts of the Site where earthworks are required by this contract. These details may be referenced as an Annexure to this document where they are extensive.

Hidden services

Provide details about and drawings showing hidden services and underground structures. If accurate details are not available state what assumptions are to be made by the *Contractor* concerning such services.

Other reports and publicly available information

This subsection may refer to mapping, hydro-graphic data, hydrological information, shipping movements, tides and published papers or Geological Surveys that the tendering contractor may need to be able to decide his method of working and programme and prepare any designs for which he would be responsible.